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09/690,002	10/16/2000	Scott C. Harris	SPAM/SCH	2977
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SCOTT C HARRIS P O BOX 927649 SAN DIEGO, CA 92192			PHAN, TAM T	
			ART UNIT	PAPER NUMBER

2144

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/690,002

Applicant(s)

HARRIS, SCOTT C.

Examiner

Tam (Jenny) Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/31/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 14-16 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 14-16 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. In view of the appeal brief filed on 03/31/2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Claims 1-7, 14-16, and 21-24 remain pending.

### ***Priority***

3. This application claims benefit of the provisional application 60/203,729 (05/12/2000).

4. The effective filing date for the subject matter defined in the pending claims, which has support in parent 60/203,729 in this application is 05/12/2000. Any new subject matter defined in the claims not previously disclosed in parent 60/203,729, is entitled to the effective filing date of 10/16/2000.

### ***Information Disclosure Statement***

5. The information disclosure statement (IDS) filed 02/13/2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each publication or that portion which caused it to be listed; and all other information or that portion which caused it to

be listed. The Non Patent Literature reference cited on IDS (Paper #2, received 02/13/2001 is not present in the application, and thus, could not be considered.

***Drawings***

6. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 14-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized.

9. For examining purposes, "An e-mail program, comprising:" will read "An e-mail program having instructions embodying on a computer readable media that are executable by a computer, comprising" to allow the claims to be examined.

***Claim Rejections - 35 USC § 112***

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 22 recites, "A method as in claim 21, further comprising assessing a common-ness of a domain a sender of a message, and using said common-ness of said domain". It is unclear what "assessing a common-ness of a domain a sender of a message" or what "using said common-ness of said domain" is intended to mean.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

13. Claims 1-6, 14, and 23-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Pang (U.S. Patent Number 6,493,007).

14. Regarding claim 1, Pang disclosed a method comprising: receiving an electronic mail message (Figures 4-6, column 7 lines 20-27, column 10 lines 8-18); displaying information about the electronic mail message in a way that allows at least one of the deleting the message without indicating whether it is spam or not; deleting the message while indicating that it is spam, or deleting the message while indicating that it is not spam (Figure 5, column 3 lines 51-54, column 7 lines 43-56, column 9 lines 3-31).

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15. Regarding claims 2-3, Pang disclosed a method further comprising storing a database of spam likelihood, and wherein said deleting while indicating updates information in the database (column 6 lines 27-39) and while indicating update rules in a rules database (column 6 lines 27-39).

16. Regarding claims 4-5, Pang disclosed a method wherein said rules include information about fields from said electronic mail message (column 6 lines 27-39) and wherein said fields include at least a sender of the e-mail message, text, of the e-mail message, and a subject of the e-mail message (column 6 lines 27-39).

17. Regarding claim 6, Pang disclosed a method wherein said fields also include a domain of a sender of the e-mail message (column 6 lines 27-39).

18. Regarding claim 14, Pang disclosed an e-mail program having instructions embodying on a computer readable media that are executable by a computer, comprising: a display portion which is display a plurality of e-mails (Figure 4); a plurality of controls including at least a first control which selects deleting an e-mail while indicating that said e-mail is spam, and a second control which selects deleting an e-mail while indicating that said e-mail is not spam (Figures 4, 5, column 8 line 63-column 9 line 13, column 10 lines, lines 30-36).

19. Regarding claim 23, Pang disclosed a method, comprising: obtaining an electronic mail message (Figures 4-6, column 7 lines 20-27, column 10 lines 8-18); and a user interface that displays information about said electronic mail message (Figures 4-5), and which user interface allows a selection to any of: delete the message without indicating whether or not the message represents spam; delete the message while indicating that the message does indicate spam or delete the message while indicating

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that the message does not indicate spam (Figures 4-5, column 3 lines 51-54, column 7 lines 43-56, column 9 lines 3-31).

20. Regarding claim 24, Pang disclosed a method further comprising a database of information indicating likelihood of spam, and wherein said delete while indicating that the message does indicate spam updates information in said database (column 6 lines 27-39).

21. Since all the limitations of the claimed invention were disclosed by Pang, claims 1-6, 14, and 23-24 are rejected.

22. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Paul (U.S. Patent Number 5,999,932).

23. Regarding claim 1, Paul disclosed a method comprising: receiving an electronic mail message (Abstract, Figures 4, 4A & 6, column 10 line 24); displaying information about the electronic mail message in a way that allows at least one of deleting the message without indicating whether it is spam or not [second display code "NEW"] (Abstract, column 10 lines 41-43), deleting the message while indicating that it is spam [third display code "JUNK"] (Abstract, column 10 lines 47-48), or deleting the message while indicating that it is not spam [first display code "OK"] (Abstract, column 10 lines 31-32).

24. Since all the limitations of the claimed invention were disclosed by Paul, claim 1 is rejected.

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25. Claims 14, 16, and 23-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Nielsen (U.S. Patent Number 6,453,327).

26. Regarding claim 14, Nielsen disclosed an e-mail program having instructions embodying on a computer readable media that are executable by a computer, comprising a display portion which is display a plurality of e-mails (Figure 4a, column 8 lines 14-43); a plurality of controls including at least a first control which selects deleting an e-mail while indicating that said e-mail is spam, and a second control which selects deleting an e-mail while indicating that said e-mail is not spam (Figure 4b, column 8 lines 14-43).

27. Regarding claim 16, Nielsen disclosed a program further comprising displaying a control which allows deleting an e-mail without indicating or not indicating whether said e-mail represent spam (Figure 4b, column 8 lines 14-43).

28. Regarding claim 23, Nielsen disclosed a method, comprising: obtaining an electronic mail message (Figure 4a-4b); and a user interface that displays information about said electronic mail message (Figure 4a-4b), and which user interface allows a selection to any of: delete the message without indicating whether or not the message represents spam (Figure 4b sign 427); delete the message while indicating that the message does indicate spam (column 4b sign 425) or delete the message while indicating that the message does not indicate spam (column 4b sign 427).

29. Regarding claim 24 Nielsen disclosed a method further comprising a database of information indicating likelihood of spam, and wherein said delete while indicating that the message does indicate spam updates information in said database (Figure 6, column 11 lines 43-59).

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30. Since all the limitations of the claimed invention were disclosed by Nielsen claims 14, 16 and 23-24 are rejected.

***Claim Rejections - 35 USC § 103***

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

32. Claims 2-7 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul (U.S. Patent Number 5,999,932) as applied above in view of McCormick et al. (U.S. Patent Number 6,421,709), hereinafter referred to as McCormick.

33. Paul disclosed a method comprising: receiving an electronic mail message (Abstract, Figures 4, 4A & 6, column 10 line 24); displaying information about the electronic mail message in a way that allows at least one of deleting the message without indicating whether it is spam or not [second display code "NEW"] (Abstract, column 10 lines 41-43), deleting the message while indicating that it is spam [third display code "JUNK"] (Abstract, column 10 lines 47-48), or deleting the message while indicating that it is not spam [first display code "OK"] (Abstract, column 10 lines 31-32).

34. Regarding claim 2, Paul did not expressly disclose a method further comprising storing a database of spam likelihood, and wherein said deleting while indicating updates information in the database. Paul suggested exploration of art and/or provided a reason to modify storing "not spam likelihood" database with storing "spam likelihood" database (Figure 6 sign 650, column 9 lines 56-67, column 10 lines 1-11). McCormick

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disclosed a method further comprising storing a database of spam likelihood, and wherein said deleting while indicating updates information in the database (Figure 10, column 2 lines 62-67, column 5 lines 16-28).

35. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Paul with the teachings of McCormick to include storing a database of spam likelihood in order to offer a more efficient filtering technique since an incoming e-mail whole addresses are included in the spam database would be immediately discarded [processed] (McCormick, column 2 lines 55-57).

36. Regarding claim 3, McCormick disclosed a method wherein said deleting while indicating update rules in a rules database (column 2 lines 62-67, column 5 lines 16-21, column 8 lines 48-52).

37. Regarding claim 4, McCormick disclosed a method wherein said rules include information about fields from said electronic mail message (column 4 lines 60-65).

38. Regarding claim 5, McCormick disclosed a method wherein said fields include at least a sender of the e-mail message, text, of the e-mail message, and a subject of the e-mail message (Figure 2, column 4 lines 60-65).

39. Regarding claim 6, Paul disclosed a method wherein said fields also include a domain of a sender of the e-mail message (column 9 lines 38-45, lines 56-67, column 11 lines 21-23).

40. Regarding claim 7, McCormick disclosed a method wherein said fields include links within the e-mail message [advertisement links] (column 6 lines 41-46, column 8 lines 58-65).

41. Regarding claim 21, Paul and McCormick combined disclosed a method, comprising determining a plurality of characteristics of an unwanted message (Paul, Figure 5, column 3 lines 54-65, column 56-67); forming a list with said plurality of characteristics (Paul, column 4 lines 34-40); forming a numerical score of an incoming message by comparing said incoming message with said list and determining commonalities between said incoming message and said list (McCormick, column 5 lines 23-29, column 8 lines 48-65); defining said message as likely being unwanted if said score is within a predetermined range (McCormick, column 8 lines 48-65); and taking an action to restrict said message based on said defining (McCormick, column 8 lines 48-65).

42. Regarding claim 22, Paul disclosed a method further comprising assessing a common-ness of a domain a sender of a message, and using said common-ness of said domain (column 11 lines 21-23, column 12 lines 54-61).

43. Since all the limitations of the claimed invention were disclosed by the combination of Paul and McCormick, claims 2-7 and 21-22 are rejected.

44. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (U.S. Patent Number 6,453,327) as applied above in view of Leeds (U.S. Patent Number 6,393,465).

45. Nielsen disclosed an e-mail program having instructions embodying on a computer readable media that are executable by a computer, comprising a display portion which is display a plurality of e-mails (Figure 4a, column 8 lines 14-43); a plurality of controls including at least a first control which selects deleting an e-mail

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while indicating that said e-mail is spam, and a second control which selects deleting an e-mail while indicating that said e-mail is not spam (Figure 4b, column 8 lines 14-43).

46. Regarding claim 15, Nielsen did not disclose a program further comprising displaying a likelihood of spam coefficient which indicates, on a weighted scale, a likelihood that the associated message represents spam. However, Leeds disclosed a program further comprising displaying a likelihood of spam coefficient which indicates, on a weighted scale, a likelihood that the associated message represents spam [confidence rating scale from 0-100%, with 100% being the rating given to a message considered to be junk e-mail or spam] (column 2 lines 26-37, column 6 lines 49-66).

47. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the e-mail program of Nielsen with the teachings of Leeds to display the likelihood of spam coefficient in order to help users quickly filter their messages since the user would be able to have the message automatically discarded or have the message marked as potentially junk (Leeds, column 7 lines 18-27).

48. Since all the limitations of the claimed invention were disclosed by the combination of Nielsen and Leeds, claim 15 is rejected.

### ***Response to Arguments***

49. Applicant's arguments filed 03/31/2005 have been fully considered but they are not persuasive.

50. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., three different forms of deletion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification

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are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). For instance, claim 1 recites “a method, comprising: receiving an electronic mail message; displaying information about the electronic mail message in a way that allows at least one of deleting the message without indicating whether it is spam or not, deleting the message while indicating that it is spam, or deleting the message while indicating that it is not spam. The applicant stated that this represents 3 different ways of deleting messages from the mailbox. The claimed limitation read “at least of” and “or” are not inclusive limitations. Thus, the method does not represent 3 different ways of deleting. The “at least one” and the “or” found in the claimed limitation suggest that there if the prior art disclosed one out of the three ways to delete the message, the prior art would have read on the claimed invention as presented in the pending claims specifically claim 1.

51. In response to applicant's argument that “Paul discloses nothing about deleting emails” it is respectfully noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 1 reads “displaying information about the electronic mail message in a way that allows at least one of the deleting the message without indicating whether it is spam or not; deleting the message while indicating that it is spam, or deleting the message while indicating that it is not spam” and thus the display code marking the e-mail as “junk” or “not junk” as disclosed in Paul would have allowed the end user to delete the e-mail in different ways.

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52. It is further submitted that email-deleting functionality is inherent in all email systems as evidenced in applicant's response received 06/03/2004 (page 7). Paul disclosed that the user interface of Paul might be implemented in known e-mail software package such as Netscape Messenger, Microsoft Outlook, Microsoft Exchange, etc. It is well known in art that these e-mail software packages have delete control functionalities to allow users to delete old and/or unwanted e-mail. Paul disclosed a method that teaches an email interface classified emails into different categories (i.e. junk mail, not junk, etc.). When the end user delete the "junk" e-mail using the conventional delete button, the user is removing the "junk" e-mail from their inbox and move the "junk" e-mail to the e-mail filter. When users delete the "not junk" e-mail using the conventional delete button, the user is removing the "not junk" e-mail from their inbox and moves the "not junk" e-mail to a designated trash folder.

53. In response to applicant's argument that Nielsen does not disclose a delete as spam control, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In Nielsen teachings, when users delete their email using the delete control, they delete their emails as not spam. The examiner is having a difficult time understanding the functionality differences between "delete an e-mail while indicating that said e-mail is not spam" in the claimed limitation and the delete

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control of Nielsen allowing the users to delete their emails as not spam in Nielsen's teachings.

54. In response to applicant argument that McCormick does not teach forming a numerical score of an incoming message by comparing said incoming message with said list and determining commonalities between said incoming message and said list, it is submitted that McCormick disclosed "These new addresses are periodically and automatically transmitted to a address filter server 22 provided at the remote central location 46. Based upon numerical and temporal factors as described hereinafter, these addresses are included on the current filter list associated with the address filter server 22 stored in a filter database associated with a database server 24 in communication with the address server 22 (column 5 lines 21-29) and "When an end user receives a piece of e-mail that he or she decides is junk mail, the user submits that message to the Collaborative Filter through a simple button click. The e-mail's body is analyzed and it is stored in the Collaborative Filter. When a small but statistically significant number of the same message have been submitted, the Collaborative Filter is updated to start filtering all such messages from the system" (column 8 lines 48-55). Thus, a numerical score of an incoming message is formed by comparing said incoming message with the filtering list prior to filtering out the message.

55. Regarding to the argument of claim 22, applicant wrote "The cite to column 11 refers to subclause C of claim 10 which simply states that the domain matches a domain on the list: presumably the safe list. This has nothing to do with how common the domain is, and does not render obvious claim 22. Column 12 line 54 refers to subclause A of claim 27; which is again a user inclusion list and has nothing to do with

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whether the domain is common or not", it is submitted that if the domain matches a domain on the list, it would then obvious that the domain is common. If the domain does not exist on the list then it would most likely be uncommon.

56. In summary, from the arguments presented by the applicant in the current and previous responses, it is apparent that the applicant's interpretation of the claim structure is very different from that of the Examiner and the Office. For example, claims 1 and 23 read "at least one of A, B, or C" or "a selection to any of: X, Y, or Z" respectively. The applicant argued that in order for the prior art to anticipate the claim, the prior art must disclosed all three limitations "A, B, and C" in claim 1 and "X, Y, and Z" in claim 23. However, "or" is used to indicate an alternative and thus is very different from "and" which is used to indicate inclusive. In addition, the "at least one of" and "a selection to any of" also indicate similar alternative. Thus, if the prior art meets one of the three limitations, the prior art reads on the claimed invention.

57. As the rejection reads, Examiner asserts that the combination of these teachings render the claimed invention obvious.

### ***Conclusion***

58. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (571) 272-3930. The examiner can normally be reached on M-F 9:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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May 19, 2005

  
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